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THE DRAMATURGY OF THE AMBITION TO ELIMINATE CORRUPTION: THE BRIBERY CASE OF IMPORTED SUGAR DISTRIBUTION

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Abstract

This non-doctrinal study analyzes the practice of ignoring the values of logical-factual justice and righteousness to eliminate corruption among the high-positioned state officials. The aim is to describe the establishment of criminal trials which are ambitious, which yet has counterproductive effects. There is not only injustice, but there is also the ignorance of the premise of material righteousness as the rational working character of criminal law. The primary data is in the form of interview to the perpetrators and the informants. The secondary data is in the form of case documents, which are analyzed qualitatively with the hermeneutic interpretation technique. Results of the study show that the ambitious elimination of corruption has the potentials to break the logics of criminal trials and restricts the ratio and conscience of law enforcers.

Keywords: The Ambition to Eliminate Corruption, Material Righteousness, Rational Conscience.

INTRODUCTION

The majority of the countries around the globe suffer from the corruption issue, particularly the developing countries. It also applies to some developed countries throughout the world. Therefore, one of the reasons behind the existence of The United Nations Convention Against Corruption (UNCAC) is that the said countries were concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.¹

Based on Black's Law Dictionary, corruption is, "An act done with an intent to give some advantage inconsistent with the official duty and the rights of others. The act of an official or fiduciary person who unlawfully and wrongfully uses his position or

¹ Kristian dan Yopi Gunawan. 2015. *Tindak pidana korupsi Kajian Terhadap Harmonisasi antara Hukum Nasional The United Nations Convention Against Corruption (UNCAC)*. Bandung: Refika Aditama. Hal 8.

character to procure some benefit for himself or for another person, contrary to duty and the rights of others.”²

It commenced from the submission of an application for the purchase of imported sugar from Limited Partnership/*Commenditaire Vennootschap* (CV) Semesta Berjaya on July 21, 2016 to the Regional Division of Indonesian Logistics Bureau/*Perum Bulog Divisi Regional* (Divre Perum Bulog) West Sumatra of 3000 (three thousand) tons, yet the request has not been responded by the Indonesian Logistic Bureau/*Perusahaan Umum Badan Urusan Logistik* (Perum Bulog). For this reason, CV Semesta Berjaya requested to IG to seek for imported sugar from the Perum Bulog to be distributed in the Province of West Sumatra. At last, on July 22nd, 2016, IG contacted Director General of Perum Bulog to supply the imported sugar to West Sumatra through the West Sumatra Divre Perum Bulog. The Director General of Perum Bulog then conveyed a message to Perum Bulog Divre West Sumatra Head regarding IG proposed to be a partner of CV Semesta Berjaya if the requirements are met, which include an allocation to purchase imported sugar from Perum Bulog to distribute them in West Sumatra. Thereafter CV Semesta Berjaya was considered to have fulfilled the requirements, the Division Head of Divre Perum Bulog followed up on it.

It is estimated that, on 2016, IG was arrested through a sting operation/*operasi tangkap tangan* (OTT) by Indonesia’s Corruption Eradication Commission/*Komisi Pemberantasan Korupsi* (KPK) investigators on the allegation of bribery in the recommendation to increase the distribution quota in West Sumatra provided by Perum Bulog to CV Semesta Berjaya. KPK investigators visited IG’s house on 22.15 Western Indonesia Time/*Waktu Indonesia Barat* (WIB). At midnight, estimated around 00.50 WIB, three guests of IG left the house. The KPK investigator team approached the said three guests in their car before escorting them back to the house of Irman. Inside the house, KPK investigator asked IG to hand over the gifts which were allegedly presented by XS and M. The said arrest had KPK confiscating some cash with the amount of Rp100 million which allegedly was handed to him as a bribe. Irman was then questioned as a witness for suspect M, the wife of the General Director of CV Semesta Berjaya (SB), XS, and accused of commercializing his influence by directing the General Director of Bulog to provide additional sugar imports to CV Semesta Berjaya.

² Rohim. 2008. *Modus Operandi Tindak Pidana Korupsi*. Depok: Pena Multi Media. Hal 2.

Some time after the arrest, IG who was then still serving as Chairman of the Regional Representative Council/*Dewan Perwakilan Daerah* (DPD) of the Republic of Indonesia was officially named a suspect by KPK. IG as the recipient of a bribe is charged with Article 12 letter and/or Article 12 letter b and/or Article 11 of Constitution Number 31 Year 1999 as amended by the Constitution Number 20 Year 2001 concerning Eradication of Corruption. In September 2016, IG was officially dismissed from his position as Chairman of Regional Representative Council and IG was proven legally and was convinced guilty of committing corruption which was decided by the Corruption Court Judge Council at the Central Jakarta Court which had permanent legal force on February 20, 2017.

There are several conditions which has not been regulated in the Constitution on the Eradication of Indonesian Corruption/*Undang-Undang Pemberantasan Tindak Pidana Korupsi* (UUPTPK) at present, which includes criminalization in private sector issue, bribery of foreign public officials, obstruction of the court/obstruction of justice, to the completely new matter which has not been included in the Indonesian UUPTPK is the provision of Article 18 of the Convention concerning Trading in Influence.³ The outline of the problems might be drawn as follows: whether the actions carried out by IG were categorized as Trading in Influence and how Trading in Influence may be ensnared by the UUPTPK.

RESEARCH METHODS

The research kinds used in this research is the normative legal research which shares similarity with doctrinal research. The said legal research is not conducted in field research manner.⁴ Normative legal research is conducted in a specific manner related to *sui generis*,⁵ in assisting solving legal issues braced by the society. In this case, jurisprudence is understood as the science of rules (norms), which is the study of

³ Andi, Hamzah. 2007. *Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Raja Grafindo Persada. Hal 251.

⁴ Ibrahim, Johnny. 2006. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Banyumedia Publishing. edisi revisi. Hal 46.

⁵ *Sui generis* merupakan peristilahan ilmu hukum, artinya ilmu hukum merupakan ilmu jenis sendiri. Dalam suatu sistem tertutup, semua bidang atau cabang ilmu dapat juga mengklaim memiliki *sui generis* yaitu dalam Hal cara kerja yang khas dan sistem ilmiah yang berbeda karena objek perhatian yang berbeda. Jadi bukan hanya ilmu hukum yang memiliki karakter *sui generis* tersebut, dalam Johnny, *op.cit*, Hal. 50.

law as a rule sytem with dogmatic law or legal system thereby law may be understood clearly as rule science.⁶

Soetandyo Wignyosoebroto stated 5 (five) legal concepts, as follows:⁷

- 1) Law as a principle of truth which is natural and universally applicable.
- 2) Law is considered as positive norms in National Legislation system.
- 3) Law is what has been decided by Judges *in concreto* and systematically as Judge-Made Law.
- 4) Law is institutionalized patterns of social behavior which exists as empirical social variable.
- 5) Law is a manifestation of symbolic meaning of social behavior as seen in their interactions.

As for normative legal research, a number of approaches are known, which includes: statute approach, conceptual approach, philosophical approach and case approach. The approach used in this research is the statute approach which is conducted by examining all laws and regulations relating to the legal issues being handled, and the case approach, which is an approach which is conducted by examining the cases related to the issues at hand which have become court decision with permanent legal force.⁸

DISCUSSION

Trading in Influence

Indonesia is a state of law which, in each policy or operational taken by the administration of the state has to be based on law (*rechstaat*) instead of the arbitrariness.⁹ As a developing country, it is inseparable from various problems, one of which is corruption. Corruption is a personal behavior or deed in the form of misappropriation for personal or other people's interests which may harm the economical state of the country.¹⁰

⁶ Johnny. *op.cit.*, Hal 51.

⁷ Soetandyo Wigyosoebroto dalam Setiono. 2005. *Pemahaman Terhadap Metodologi Penelitian Hukum*. Surakarta: Program Pascasarjana UNS. Hal 20.

⁸ Peter, Mahmud Marzuki. 2010. *Penelitian Hukum*. Jakarta: Penerbit Kencana. Hal 24.

⁹ Jimly, Asshiddiqie. 2014. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Sinar Grafika. Hal 69.

¹⁰ Aziz, Syamsuddin. 2017. *Tindak Pidana Khusus*. Jakarta: Sinar Grafika. Hal 15.

Corruption is literally a fraud or embezzlement for the benefit of others or self in the form of things which are rotten, evil, and destructive.¹¹ Factors which cause the act of corruption include economic factors, modernization factor, and the lack of transparent government system which result in displacement of life values which exist and develop within the society. In accordance with the said matter, to eradicate corruption, a state's responsibility and the role and commitment of the community are required to oppose corrupt criminal practices, considering corruption is a criminal act which harms both the country and the society. Through the ratification of an international agreement by the state, it has proven the commitment of the government and the community to eradicate corruption.¹²

In general, the corruption terminology is essentially an act with the intention of promising an offer or giving something both directly or indirectly to a public official or someone else to gain an advantage.¹³ The corruption formulation in Constitution No. 20 of 2001 concerning the Amendment of Constitution No. 31 of 1999 concerning Corruption Eradication is a formulation of a criminal act that stands alone. Certain elements in the Constitution formulation are threatened using a type of criminal with a certain criminal system as well. These formulations include corruption by enriching oneself, another person, or a corporation, then bribery by giving or promising something, and bribery of civil servant who receive gratification and bribery corruption on civil servant by considering the authority of their position. From these various types of corruption, trading in influence is not regulated in Indonesian positive law.

According to Article 18 UNCAC, what is said with Influence Trading, which contains Trading in influence, consists of:

- 1) Trading: trade, merchandising, marketing, merchandise, trader or trade in something to gain an advantage.
- 2) Influence: UNCAC does not give the definition regarding the influence or the definition of trading in influence, but there are several references regarding the definition of trading in influence, namely: Trading in influence is regulated into juridical form in UNCAC Article 18 point (a) and (b).

¹¹ Evi, Hartanti. 2014. *Tindak Pidana Korupsi*. Jakarta: Sinar Grafika. Hal 9.

¹² Aziz, Syamsuddin. *op.ci.*, 15.

¹³ J Kristiadi. 2015. *Bersatu Melawan Perdagangan Pengaruh*. Harian Kompas Edisi 24. page 15.

If reviewed from the formulation, it is similar to bribery, but wider. The formulation of Article 18 “the act committed intentionally” is as follows:

- 1) Promising, offering or giving a public officials or any other person, directly or indirectly, of an undue advantage (not feasible), in order so the public official or the person abuses his/her real or supposed influence, with a view to obtain from an administrative or public (ruler) authority of the State Party, an undue advantage for the original instigator (advocate) of the act or for any other person.
- 2) The solicitation or the acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself/herself or for another person so that the public official or the person abuses his/her real or supposed influence, with a view to obtain from an administrative or public (ruler) authority of the State Party an undue advantage.¹⁴

Each State Party shall consider adopting legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally:

- 1) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuses his/her real or supposed influence with a view to obtain from the public official an undue advantage for the interest of the act’s original instigator or for any other person.
- 2) The solicitation or the acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself/herself or for another person in order that the public official or the person abuses his/her real or supposed influence with a view to obtain from the public official an undue advantage.
- 3) The scope of this offense is broader than the bribery offense, because it concerns “the abuse of real or supposed influence” rather than “doing or not doing” (in accordance with the choice of the bribe giver).

If related to the case that ensnared IG in the corruption case as regulated in Article 12 point a¹⁵ or Article 12 point b¹⁶ and or Article 11¹⁷ of Constitution Number

¹⁴ *Ibid*, page 255.

¹⁵ Article 12 point a: civil servant or state administrator that receive gift or promise, even though it is known or reasonably suspected that the gift or promise is given to motivate doing or not doing something in their position, contrary to their obligations;

31 of 1999 as amended by Constitution Number 20 of 2001 concerning Corruption Eradication, who has now been sentenced guilty which have permanent legal force for having committed corruption.

Nevertheless, the author argues that trading in influence cannot be equated with gratuity or bribery. Because in Article 12B Constitution No. 20 of 2001, namely the Gift in a broad sense, includes giving money, goods, rebate (discount), commission, loan without interest, travel ticket, lodging facility, travel, free medical treatment, and other facilities. Article 12B paragraph (1) Constitution No.31/1999 in connection with Constitution No. 20/2001, reads Any gratuity to a civil servant or state administrator is considered a bribe, if it relates to his/her position and is contrary to his/her obligations or duties. While trading in influence is Giving or receiving not only for public official but also for private party or individual outside of public official. He/she may not be related or contrary to his/her obligations or duties.

Regarding the provision of trading in influence, it has not been regulated in the Indonesian Constitution concerning Corruption Eradication at present, including the criminalization of the private sector, the bribery of foreign public officials, the obstruction of justice, to the truly new and unknown matters in the Indonesian Constitution concerning Corruption Eradication (UUPTPK), such as the provision of the Convention Article 18 concerning "Trading in Influence".¹⁸

IG's action includes Trading in Influence, in this case because IG has a position so that he can influence others. So IG should not be charged with accepting bribery. In relation to IG and his position, his capacity is only in seeking the aspirations of the West Sumatra people related to the availability of sugar supply. Related to being caught red-handed with Rp. 100.000.000 (one hundred million), the person who gave it has also

¹⁶ Article 12 point b: civil servant or state administrator who receives a gift, even though it is known or reasonably suspected that the gift was given as a result or due to having done or not done something in their position that is contrary to their obligations;

¹⁷ Article 11: To be sentenced to a minimum imprisonment of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp 50.000.000,00 (fifty million rupiahs) and a maximum of Rp 250.000.000,00 (two hundred and fifty million rupiahs), civil servant or state administrator who receives gift or promise, even though it is known or suspected, that the gift or promise is given because of the power or authority associated with their position, or in the mind of the person giving the gift or promise there is a relationship with his position.

¹⁸ Andi, Hamzah. 2007. *Pemberantasan Korupsi melalui Hukum Pidana Nasional dan Internasional*. Jakarta: Raja Grafindo Persada. page 251.

testified that IG actually did not know that what he gave was contained gratitude money.

Trading in Influence Criminalization into Corruption

We can see the government spirit in eradicating corruption with the establishment of the Corruption Eradication Commission (KPK-*Komisi Pemberantasan Korupsi*) despite the existence of the Police and the Prosecutors Office. Corruption has been considered as an exceptional crime or "EXTRA ORDINARY CRIME", so this crime is often regarded as "BEYOND THE LAW" because it involves the HIGH LEVEL ECONOMIC perpetrators and the HIGH LEVEL BEUREAUCRACY, both economic and governmental bureaucrats. While viewed from the impact of corruption itself, corruption is blamed as the main cause of the nation's downturn¹⁹. Therefore, the government is committed in eradicating corruption.

The Enforcement of Corruption Elimination must be accompanied by clear legal regulations so that there are limits which are included in corruption and which are not. In Article 40 paragraph (1) stated, "A person can only be held responsible if the person commits a criminal act intentionally or due to negligence". Then, it means that a person can be held liable if the person violates the regulations both intentionally and negligently, in this case the corruption. Therefore, if someone does not violate the regulations, then the criminal liability cannot be imposed.

The reform of Constitution Number 20 of 2001 concerning Corruption Eradication has not yet regulated trading in influences, only regulates bribery and gratuity. Trading in influences was first regulated in the United Nations Convention Against Corruption (UNCAC) at the United Nations (UN) Convention.

The United Nations Convention Against Corruption (UNCAC) was endorsed at the Diplomatic Conference in Merida, Mexico in December 2003 and was open for signature by the Participating States of the Convention. The UN General Assembly Session with Resolution Number 57/169 has adopted the UN Convention draft as a

¹⁹ Muhammad Yamin, 2010, *Tindak Pidana Khusus*, Bandung: CV Pustaka Setia, page 224 .

valid document and was ready to be signed by the Participating States of the Convention from 9 to 11 December 2003.²⁰

Indonesia signed the convention and has ratified the Convention into Constitution Number 7 of 2006 on September 19th, 2006. Overall, as of December 2012, 165 countries were listed as States parties to the UN convention against corruption. However, until now Indonesia has not yet revised the Indonesian Constitution concerning Corruption Eradication (hereinafter referred to as UUPTPK-*Undang-undang Pemberantasan Tindak Pidana Korupsi*) in line with the UNCAC so that there is a legal void in Indonesia regarding trading in influences.

The cases of trading in influences are different from bribery or gratification which are clearly regulated in the Constitution of the Corruption Crime. Yet, the law enforcers try to fit it as a crime of corruption. There needs to be criminalization in the cases of trading in influence to enforce that, as the correlation between the trading in influence and the crime of corruption is very strong. The values within the trading in influence and the crime of corruption are the same. Thus, the handling or the treatment in the context of criminal law policies must be comprehensive. This means that is the crime of corruption is a grand act of crime, thus the small things which may influence the appearance of corruption must be handled, so that its treatment is not partial. Apart from that, for the reason of justice, benefits also become the basis in handling the cases of trading in influence, so that it may be included as the crime of corruption. Yet, it becomes unbalanced when, for the mere reason of justice, benefits are without the presence of law certainty, as opined by Gustav Radbruch. Generally, the fulfillment of the certainty of law does not always have to be given priority in every positive law, as if the law certainty must come first, then there will be justice and benefits. Gustav Radbruch then errs his theory that the three aims of law are balanced.²¹

The fact that trading in influence is deemed the same as the criminal act of corruption becomes a problem when the trading in influence modus operandi is done by someone who is not an establisher of the state. The Constitution on the Criminal Case of Corruption which is applied in Indonesia right now cannot reach/cannot be used to bind

²⁰ Forum Pemantau Pemberantasan Korupsi. 2004. *United Nations Convention Against Corruption (UNCAC) 2003* terjemahan. Jakarta: Perum Percetakan Negara RI. page.5.

²¹ Nur, Agus Susanto. *Dimensi Aksiologis Dari Putusan Kasus "ST" Kajian Putusan Peninjauan Kembali Nomor 97 PK/Pid.Sus/2012*. Jurnal Yudisial Vol. 7 No. 3 Desember 2014.

the perpetrator. The draft of the criminal act of corruption stands by itself, and is included in the Constitution Article No. 31 of 1999 which has been changed into the Constitution No. 20 of 2001 on the Criminal Act of Corruption. This draft has some elements and there are certain threats of imprisonment, which are:

- a. The criminal act of corruption to enrich oneself, other people or a corporation which are regulated in Article 2 paragraph (1) and (2);
- b. The criminal act of corruption through misuse of power, opportunity, position facilities or power (Article 3);
- c. The corruptive criminal act of bribery by giving or promising some things (Article 5);
- d. The corruption of civil servants by accepting gifts or promises related to the power of the position (Article 11);
- e. The civil servants' corruptive criminal act of bribery by accepting gratification (Article 12B);
- f. The civil servants' corruption of bribery in remembrance of the position's power (Article 13).

From the various criminal acts of corruption above, trading in influence is not regulated in the offense draft of the Constitution of the Corruption Criminal Act. Yet, if referenced on the Constitution No. 7 of 2006 regarding the issuing of the United Nations Convention Against Corruption, 2003 on Chapter III, Indonesia actually has the basis of law to punish the trading in influence criminal act. Chapter III states that: Criminality and Law Enforcement, containing the Bribery of National Public Officials, the Bribery of Foreign Public Officials, and International Public Organization Officials, Embezzlement, Misuse and other Deviations of wealth by Public Officials; Trading in Influence; Misuse of Function; Enriching Oneself Illegally, Bribery in the Private Sector; Embezzlement of Wealth in the Private Sector; Laundering of Illegal Profits; Concealment; Deterrence of the Court Processes; the Responsibility of Legal Bodies; Participation and Experiments; Knowledge, with the Aim and Means which are Elements of Crime; the Limitation Regulation of Suing and Trials, and Witnesses; Freezing, Confiscation, and Seizure; the Protection of Witnesses, Professionals, and Victims; Protection of Plaintiffs; the Impacts of the Act of Corruption; Compensation

and Losses; Bodies of Special Power; Cooperation with Law-Enforcing Bodies; Cooperation between National Bodies in Power; Cooperation between National Bodies in Power and the Private Sector; the Bank's Privacy; Criminal Record; and Jurisdiction.

Table of the Difference between Trading in Influence and Bribery

	Trading in Influence	The Crime of Bribery
Regulations	Regulated in Article 18 (a) and (b) of the ratified UNCAC based on the Constitution No. 7 of 2006. Until now, there has not been any regulations on the punishments.	Regulated in Article 5 paragraph (1) and (2), Article 11, Article 12 (a) and (b) of the Constitution No. 31 of 1999 <i>Jo</i> the Constitution No. 20 of 2001 regarding the Crime of Corruption. Punished.
The Parties Involved	Two perpetrators from the side of the policy-makers including those who have sold their influence (it doesn't have to be officials or state establishers). One perpetrator who gives something to obtain profits from the state-establishing public official.	The bribe acceptor must be a state-establisher as there is the element of misuse of power and influence in the position. The bribe-giver may be a state-establisher or from the private sector.
The Action Against the Law	Receiving/asking for inappropriate benefits.	Receiving gifts or promises to do something related to the position which is against the responsibilities.
Subject of Law	The perpetrator may not be a public official, yet he/she has the access or power to public authorities. This can be found in the phrase, "Public official or any other person" (Article	Receiving promises or gifts which absolutely come from civil servants or public officials. This can be seen from the provisions of Article 2 of

	18 Letter (a) UNCAC)	the Constitution No. 28 of 1999 regarding Public Officials.
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The correlation of the trading in influence with the criminal act of corruption based on Article 18 of the UNCAC is that the Trading in Influence contains:

- a. Trade: trade, merchandising, marketing, merchandise, trader or trade in something to gain an advantage.
- b. Influence: the UNCAC does not give a definition related to influence or the definition of trading in influence, yet there are some references regarding the trading in influence, which are: trading in influence is regulated in the juridical form as contained in Article 18 letter (a) and (b) of the UNCAC. There is the same correlation between the Trading in Influence with the Criminal Act of Corruption, because there is a strong relation between the trading in influence and the power contained in the criminal act of corruption. The trading in influence includes the policy enforcers and because of his/her power, he//she can undergo the criminal act of corruption. This trading in influence is not only from the person in power, but it can also be from private sectors or individuals. They can do trading in influence because of their closeness or other influences.

CONCLUSION

The development of criminal acts must be followed by clear regulations and punishments. The void of law may result to uncertainty of law. For example, trading in influence should not be deemed the same as the case of bribery in the Constitution No. 31 of 1999, which has been changed into the Constitution No. 20 of 2001 regarding the Crime of Corruption. Yet, it is forced to be the same as the crime of bribery as regulated in the Constitution on the Crime of Corruption, as shown in the case verdict of Irman Gusman. In reference to the Constitution No. 7 of 2006 regarding the issuing of the United Nations Convention Against Corruption, 2003 Chapter III, Indonesia actually has the legal basis to publish the trading in influence criminal act. Because of that, for the sake of law certainty, thus the Constitution No. 31 of 1999 which has been changed

into the Constitution No. 20 of 2001 regarding the Criminal Act of Corruption must be revised by regulating on the trading in influence clearly.

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